

005207468

## SENATE BILL NO. 63

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice  
on February 2, 2000)

(Patron Prior to Substitute—Senator Marye)

*A BILL to amend and reenact §§ 15.2-729, 25-46.36, 25-236, 25-238, 25-239 and 25-248 of the Code of Virginia, relating to the Uniform Relocation Assistance Act.***Be it enacted by the General Assembly of Virginia:****1. That §§ 15.2-729, 25-46.36, 25-236, 25-238, 25-239 and 25-248 of the Code of Virginia are amended and reenacted as follows:**

§ 15.2-729. Relocation assistance programs.

The board ~~may~~ shall provide by local ordinance for the application of Chapter 6 (§ 25-235 et seq.) of Title 25 to displaced persons as defined in § 25-238 ~~or as more narrowly defined by the board~~, in cases of acquisition of real property for use in projects or programs in which only local funds are used.

§ 25-46.36. Cities to pay relocation costs.

Notwithstanding the provisions of Chapter 6 (~~§ 25-235 et seq.~~) of this title, the governing body of any city ~~may~~ shall authorize the payment of relocation costs in connection with ~~federally assisted programs the exercise of the power of eminent domain as provided in Chapter 6 (§ 25-235 et seq.) of this title~~ under such rules and regulations as the ~~program~~ such chapter may require.

§ 25-236. Application of chapter.

A. The provisions of any municipal charter notwithstanding, the provisions of this chapter shall be applicable to the acquisition of real property by any state agency as hereinafter defined ~~for use in projects or programs in which federal or state funds are used; provided, however, that for the purposes of this chapter, federal guarantees or insurance shall not be deemed to be federal funds.~~B. This chapter shall not apply to acquisitions by a state agency, as hereinafter defined, (i) which are voluntarily initiated or negotiated by the seller under no threat of condemnation, (ii) where property is dedicated pursuant to the provisions of Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2, or (iii) where property is voluntarily dedicated or donated for no consideration unless compliance with the provisions of this chapter in such instances is a prerequisite to the receipt, and expenditure of federal funds on the projects for which such property is acquired; ~~provided, however, that the~~.

C. The provisions of this chapter relating to relocation assistance shall apply for the benefit of persons, other than the owner, who are actually and lawfully occupying the real property to be acquired and who have been occupants thereof for at least ninety days prior to the initiation of negotiations for acquisition.

§ 25-238. Definitions.

As used in this chapter the term:

"Business" means any lawful activity, excepting a farm operation, conducted primarily:

1. For the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

2. For the sale of services to the public;

3. By a nonprofit organization; or

4. Solely for the purposes of § 25-239 A for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

"Comparable replacement dwelling" means any dwelling that is decent, safe and sanitary; adequate in size to accommodate the occupants; within the financial means of the displaced person; functionally equivalent; in an area not subject to unreasonable adverse environmental conditions; and in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services and the displaced person's place of employment.

"Displaced person" means any person who moves (i) from real property, or moves his personal property from real property, (a) as a direct result of a written notice of intent to acquire or the acquisition of such real property, in whole or in part, for any program or project undertaken by a state agency or (b) on which such person is a residential tenant, or conducts a small business, or a farm operation or a business defined in this article as a direct result of rehabilitation, demolition, or such other displacing activity as the state agency may prescribe, under a program or project undertaken by the state agency in any case in which the state agency determines that such displacement is permanent; and (ii) solely for the purposes of §§ 25-239 A and B and 25-242, as a direct result of a written notice of intent to acquire or the acquisition of real property on which such person conducts a business or farm

60 operation, for such program or project; or as a direct result of rehabilitation, demolition, or such other  
61 displacing activity as the state agency may prescribe, under a program or project undertaken by the state  
62 agency in any case in which the state agency determines that such displacement is permanent.

63 The term "displaced person" does not include (i) a person who has been determined, according to  
64 criteria established by the state agency to be either in unlawful occupancy of the displacement dwelling  
65 or to have occupied such dwelling for the purpose of obtaining assistance under this chapter; or (ii) in  
66 any case which the state agency acquires property for a program or project, any person, other than a  
67 person who was an occupant of the property at the time it was acquired, who occupies such property on  
68 a rental basis for a short term or a period subject to termination when the property is needed for the  
69 program or project.

70 "Farm operation" means any activity conducted solely or primarily for the production of one or more  
71 agricultural products or commodities, including timber, for sale or home use, and customarily producing  
72 such products or commodities in sufficient quantity to be capable of contributing materially to the  
73 operator's support.

74 "Mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid  
75 purchase price of, real property, together with the credit instruments, if any, secured thereby.

76 "Nonprofit organization" means an organization that is exempt from paying federal income taxes  
77 under § 501 of the Internal Revenue Code (26 U.S.C. § 501).

78 "Person" means any individual, partnership, corporation or association.

79 "State agency" means any (i) department, agency or instrumentality of the Commonwealth; ~~or any~~  
80 (ii) public authority, municipal corporation, local governmental unit or political subdivision of the  
81 Commonwealth; or any department, agency or instrumentality of ~~any public authority, municipal~~  
82 ~~corporation, local government unit, political subdivision of the Commonwealth, or two or more of any~~  
83 ~~of the aforementioned and thereof;~~ (iii) any person who has the authority to acquire property by eminent  
84 domain under state law ~~and who;~~ or (iv) ~~two or more of the aforementioned, which~~ carries out projects  
85 ~~with federal or state financial assistance~~ that cause people to be displaced.

86 § 25-239. Payments for moving and relocation expenses.

87 A. Whenever the acquisition of real property for a program or project undertaken by a state agency  
88 will result in the displacement of any person, such agency shall make fair and reasonable relocation  
89 payments to displaced persons as required by this chapter for:

90 1. Actual reasonable expenses in moving himself, his family, business, farm operation, or other  
91 personal property;

92 2. Actual direct losses of tangible personal property as a result of moving or discontinuing a business  
93 or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been  
94 required to relocate such property, as determined by the state agency;

95 3. Actual reasonable expenses in searching for a replacement business or farm; and

96 4. Actual reasonable expenses ~~necessary to reestablish~~ *necessarily incurred in reestablishing* a  
97 displaced farm, nonprofit organization or small business at its new site, but not to exceed ~~\$10,000~~  
98 *25,000* in accordance with criteria established by the state agency.

99 B. Any displaced person eligible for payments under subsection A of this section who is displaced  
100 from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the  
101 payments authorized by subsection A of this section may receive a moving expense allowance,  
102 determined according to a schedule established by the state agency.

103 C. Any displaced person eligible for payments under subsection A of this section who is displaced  
104 from his place of business or farm operation and who is eligible under criteria established by the state  
105 agency may elect to accept the payment authorized by this subsection in lieu of the payment authorized  
106 by subsection A of this section. Such payment shall consist of a fixed payment in an amount to be  
107 determined according to criteria established by the state agency, except that such payment shall not be  
108 less than \$1,000 nor more than ~~\$20,000~~ *\$50,000*. A person whose sole business at the displacement  
109 dwelling is the rental of such property to others shall not qualify for a payment under this subsection.

110 § 25-248. General rules for conduct of acquisition.

111 Whenever real property is acquired by a state agency, on or after April 10, 1972, in connection with  
112 any programs or projects, such acquisition shall be conducted, to the greatest extent practicable, in  
113 accordance with the following provisions:

114 (a) An agency shall make every reasonable effort to acquire expeditiously real property by  
115 negotiation.

116 (b) Real property shall be appraised before the initiation of negotiations, and the owner or his  
117 designated representative shall be given an opportunity to accompany the appraiser during his inspection  
118 of the property.

119 (c) Before the initiation of negotiations for real property, the state agency concerned shall establish  
120 an amount which it believes to be just compensation therefor and shall make a prompt offer to acquire  
121 the property for the full amount so established. In no event shall such amount be less than the agency's

approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for the amount it established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(d) No owner shall be required to surrender possession of real property before the agency concerned pays the agreed purchase price, or deposits with the state court in accordance with applicable law, for the benefit of the owner, an amount not less than the agency's approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.

(e) The construction or development of a public improvement shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling will be available), or to move his business or farm operation, without at least ninety days' written notice from the agency concerned, of the date by which such move is required.

(f) If the agency permits an owner or tenant to occupy the real property acquired on a rental basis for a short term for a period subject to termination by the state agency on a short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(g) In no event shall the agency either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property.

(h) If any interest in real property is to be acquired by exercise of the power of eminent domain, the agency concerned shall institute formal condemnation proceedings. No agency shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(i) If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the agency concerned shall offer to acquire the entire property.

*The provisions of this section requiring the agency to obtain or rely upon an appraisal shall not apply to the acquisition of real property by a public service corporation, municipal corporation, local governmental unit or political subdivision of the Commonwealth or any department, agency or instrumentality thereof, or two or more of the aforementioned if the official responsible for the acquisition determines that the value of the property being acquired is less than \$10,000, based on assessment records or other objective evidence.*

*2. That the provisions of this act shall not apply to the acquisition of real property that is the subject of a certificate recorded prior to January 1, 2001, in the clerk's office where deeds are recorded; that is the subject of a petition for condemnation filed prior to January 1, 2001; or that is required to construct a project funded by bonds approved prior to July 1, 2000.*